



Clerk's stamp:

COURT/ESTATE FILE NUMBER 24-2878531
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL UNDER SECTION 50.4(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-
3, AS AMENDED

APPLICANT: NILEX INC.
DOCUMENT **FIRST REPORT OF THE PROPOSAL TRUSTEE**
October 31, 2022

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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**First Report to Court of
KSV Restructuring Inc.
as Proposal Trustee of
Nilex Inc.**

October 31, 2022

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Court File No.: _____

COURT OF KING'S BENCH OF ALBERTA**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
NILEX INC.
IN THE CITY OF CALGARY, IN THE PROVINCE OF ALBERTA****FIRST REPORT OF KSV RESTRUCTURING INC.
AS PROPOSAL TRUSTEE OF
NILEX INC.****October 31, 2022****1.0 Introduction**

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV"), in its capacity as proposal trustee (the "Proposal Trustee") in connection with a Notice of Intention to Make a Proposal ("NOI") filed on October 27, 2022 (the "Filing Date") by Nilex Inc. (the "Company") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix "A".
2. The principal purpose of this proceeding is to: (a) create a stabilized environment to allow the Company to continue a sale process commenced prior to these proceedings (the "Sale Process") for its business being carried out by Valitas Capital Partners ("Valitas"), an investment banking firm engaged by the Company; (b) provide the Company with the opportunity to complete a going concern transaction that is in the best interests of the Company and its stakeholders; and (c) file a proposal to its creditors.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the basis on which Canadian Imperial Bank of Commerce ("CIBC"), the Company's principal secured creditor and operating lender, has agreed to fund the Company's operations during these proceedings;
 - c) summarize the status of the Sale Process, including the process carried out by Valitas to-date and the future Sale Process timelines;
 - d) provide information concerning a judgement debt in the amount of \$639,000 owing to Ian Wilson ("Wilson"), a former shareholder, and a Garnishee Summons dated July 21, 2022 (the "Garnishment") filed by Hugh Watt ("Watt"), a former shareholder and judgement creditor in the amount of \$410,178.78, directing the Company's customers to pay funds owing to the Company into the Court of King's Bench of Alberta (the "Court");

- e) discuss the relief sought by the Company to have any funds paid into Court pursuant to the Garnishment be released to the Company forthwith and directing all customers who received the Garnishment who have not yet paid any amounts into Court to pay all such amounts to the Company, as well as all future amounts that may become payable by these customers to the Company;
- f) explain why the Proposal Trustee supports the Company's request for an order expanding the scope of the stay of proceedings in these proceedings as it relates to the terms of supply and service to the Company on a basis consistent with the provisions of the model Initial Order in a proceeding under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA");
- g) summarize a proposed key employee retention plan (the "KERP") for certain of the Company's employees and discuss the Company's request that the terms of the KERP be filed on a confidential basis;
- h) discuss the rationale for the Company seeking approval of the following Court-ordered charges (the "Court-ordered Charges"):
 - i. a charge in the amount of \$350,000 (the "Administration Charge") for the fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, Cassels Brock & Blackwell LLP ("CBB"), and the Company's counsel, Blake, Cassels & Graydon LLP ("Blakes");
 - ii. a charge for all post-filing advances (the "Lender Priority Charge") made by CIBC under the Company's existing Credit Agreement dated as of June 1, 2022 (the "CIBC Credit Agreement"), as amended pursuant to the terms of a Forbearance Agreement dated October 17, 2022 (the "Forbearance Agreement");
 - iii. a \$925,000 charge in favour of the directors and officers of the Company (the "D&O Charge"); and
 - iv. a charge in the amount of \$800,000 securing amounts payable under the proposed KERP (the "KERP Charge");
- i) discuss the recommended priority of the Court-ordered Charges;
- j) discuss the Company's request for an extension of the deadline to file a proposal from November 26, 2022 to January 10, 2023;
- k) report on the Company's weekly cash flow projection for the period October 27, 2022 to January 13, 2023 (the "Cash Flow Forecast"); and
- l) recommend that the Court grant the relief sought by the Company.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company's representatives, the books and records of the Company and discussions with the Company's representatives. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein. An examination of the Cash Flow Forecast as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Proposal Trustee's website at: <https://www.ksvadvisory.com/experience/case/nilex>.

1.5 KSV's Prior Mandate

1. KSV Advisory Inc. ("KSV Advisory")¹, an affiliate of KSV, was most recently engaged by the Company as its financial advisor pursuant to an engagement letter dated December 20, 2021 (the "Engagement Letter"). KSV's primary role since that time has been to, *inter alia*, liaise with the Company and Valitas on the conduct of the Sale Process. KSV's role prior to July 2022 was very limited. KSV was also previously retained by the Company on a limited basis to provide financial advisory services.
2. The Engagement Letter states that KSV's mandate on behalf of the Company terminates if the Company considered it necessary to commence an insolvency process and if KSV was appointed as the court officer in that process.

¹ KSV Advisory was engaged for this advisory mandate. KSV is a wholly-owned subsidiary of KSV Advisory. KSV holds the firm's trustee license and carries out formal insolvency appointments, while KSV Advisory performs advisory mandates.

2.0 Background

1. Fulcrum Capital Partners Inc. (“Fulcrum”) has been the Company’s controlling shareholder since 2013. The Company has been operating in the geosynthetics industry providing civil environmental products and technologies since 1977. The Company provides environmental solutions that are used in road building, erosion and sediment control, water management and containment. The Company also offers conversion and fabrication options, customization of standard products to site and project-specific requirements.
2. The Company's registered office is in Calgary. The Company leases its head office premises in Edmonton. It also operates from four other leased premises located in each of Calgary, Saskatoon, Surrey and Toronto.
3. The Company is the 100% shareholder of Nilex USA Inc. (“Nilex USA”), which operates from leased offices in Utah and Colorado. Nilex USA is not subject to the Company’s NOI proceedings or any other insolvency process. Nilex USA is continuing to operate in the normal course.
4. The Company presently has approximately 70 full-time employees and 44 seasonal employees, which does not include Nilex USA. The Company’s workforce is not unionized. The Company offers its employees a defined contribution pension plan. The Company is current on its contribution obligations to employees.
5. Additional background information about the Company is included in the Affidavit of Jeff Allen, the Company’s Vice President, Finance, sworn October 31, 2022 (the “Affidavit”) filed in support of the Company’s application returnable November 9, 2022, before the Court.

2.1 Financial Difficulties

1. The Company has incurred losses for several consecutive years. Losses have continued in recent years due to the Covid-19 pandemic, rising material costs, supply chain issues and slowdowns in the construction industry. As a result of these and other issues, the Company decided to initiate restructuring proceedings by filing the NOI. Filing the NOI will provide the Company with the stability it requires to advance the Sale Process, with the objective of completing a going-concern sale in the near term. As discussed in Section 4 below, the Sale Process is at an advanced stage and offers are to be submitted on November 8, 2022.
2. A summary of the Company’s financial results² for its fiscal years ended December 31, 2020 and 2021, and the eight months ended August 31, 2022, is presented in the table below.

² Excludes Nilex USA’s results, which follow the same trend and are not material relative to the Company’s results.

(\$000s)	8 months ended August 31, 2022 (unaudited)	Fiscal 2021 (unaudited)	Fiscal 2020 (unaudited)
Sales	33,956	53,459	50,923
Cost of sales	(25,630)	(40,773)	(39,350)
Gross margin	8,325	12,686	11,573
Net loss	(2,006)	(1,837)	(1,748)
Accumulated Deficit	(41,645)	(39,639)	(37,802)

3. As reflected above, the Company has incurred significant and recurring losses since fiscal year 2020. Consistent with the seasonality of the Company's business, operating losses are projected to continue during the fourth quarter of this year and through the first quarter of 2023. The table also reflects that as of August 31, 2022, the Company had an accumulated deficit of approximately \$41.6 million, reflecting a history of recurring losses.
4. The Company's business fluctuates according to activity in the construction industry. Accordingly, it generates most of its sales in the warmer April to October period. Sales are significantly lower during the balance of the year.
5. The Company is facing a liquidity crisis. Absent the commencement of these proceedings, the Company will soon not have funding available to continue to operate in the normal course. CIBC, the Company's operating lender, has agreed to continue to fund the Company's business and operations in accordance with the terms of the Forbearance Agreement while the Company completes the Sale Process.

2.2 Assets

1. Based on the Company's most recent internal financial statements, a summary of the Company's assets as at August 31, 2022 is provided below³.

Description	Book Value (\$000s)
Accounts receivable	12,853
Inventory	10,863
Other assets	300
Fixed assets	851
Intercompany receivable – Nilex USA	5,201 ⁴
Goodwill and intangible assets	3,393
Total	33,461

- Accounts receivable: comprised of amounts owing from customers for completed distribution sales and installation work.
- Inventory: comprised of geotextiles, geogrids, liners, paving products, erosion and sedimentary control products and other related materials.
- Other assets: comprised of deposits and prepaid expenses.

³ The book values presented below exclude Nilex USA as it is not subject to these proceedings.

⁴ See footnote 7.

- Fixed assets: comprised of furniture, factory equipment/racking, leasehold improvements, computer equipment and software.
- Intercompany receivable: the Company is the largest unsecured creditor of Nilex USA, representing approximately 80% of Nilex USA's unsecured creditor obligations.
- Goodwill and intangible assets: includes the Company's intellectual property.

2.3 Liabilities

2.3.1 CIBC

1. CIBC is the Company's operating lender. CIBC is presently owed approximately \$17.85 million, comprised of approximately \$15.35 million under the CIBC Credit Agreement and \$2.5 million under the business credit availability program ("BCAP"). Interest and costs continue to accrue on both facilities.
2. The Company is in default of the CIBC Credit Agreement. On September 15, 2022, CIBC issued a demand and a notice of intention to enforce security under section 244 of the BIA. On October 17, 2022, the Company and CIBC entered into the Forbearance Agreement.
3. The Forbearance Agreement requires that if the Company determines it is necessary to commence an insolvency process: a) CIBC will be treated as an "unaffected creditor" in the Company's NOI proceedings; b) the Sale Process will have the milestones and deadlines detailed in Section 4 of this Report; and c) CIBC will provide funding to the Company, conditional upon, among other things, the Court granting the Lender Priority Charge for any post-filing advances and CIBC's ability to apply post-filing collections against its pre-filing debt.
4. In advance of these proceedings, the Proposal Trustee instructed its legal counsel, CBB, to provide an opinion on the validity and enforceability of CIBC's security. CBB's opinion dated October 29, 2022, which addresses the laws of Alberta, British Columbia and Ontario⁵ provides that, subject to the customary assumptions and qualifications contained therein, the security granted to CIBC is valid and enforceable. A copy of the security opinion can be made available to the Court upon request.
5. The security opinion was prepared prior to these proceedings as the CIBC Credit Agreement and the Company's existing cash management system requires the Company's accounts receivable collections to be swept daily and applied against the CIBC debt. The Forbearance Agreement requires that process to continue during these proceedings, with post-filing receipts against the Company's pre-filing debt.

2.3.2 Fulcrum

1. Fulcrum is also a secured creditor of the Company. Based on the Company's internally prepared balance sheet, Fulcrum was owed approximately \$44.9 million as at August 31, 2022, plus interest and costs which continue to accrue.

⁵ CBB's opinion also notes that CIBC's security is registered in Saskatchewan as well.

2. CBB reviewed Fulcrum’s security documents and security registrations and issued an opinion dated October 30, 2022, which addresses the laws of Alberta, British Columbia and Ontario⁶ providing that, subject to the customary assumptions and qualifications contained therein, the security granted to Fulcrum is valid and enforceable. A copy of the security opinion can be made available to the Court upon request.

2.3.3 Other Secured Creditors

1. Searches as of October 28, 2022 of the personal property security registry in Alberta as against the Company also show registrations in favour of certain vehicle financiers, being Element Fleet Management Inc., Foss National Leasing and Leavitt Machinery Canada Inc. Foss National Leasing has also made registrations in the British Columbia and Ontario personal property security registries.

2.3.4 Unsecured Creditors

1. According to the Company’s books and records, amounts owing to suppliers and service providers (excluding off-balance sheet obligations, such as employee and landlord claims) at the Filing Date totaled approximately \$12.2 million.
2. The Company’s preliminary list of creditors was filed with its NOI statutory documents and is available on the Proposal Trustee’s website.

3.0 Nilex USA

1. Nilex USA is not subject to these proceedings nor is it subject to any insolvency proceedings. Nilex USA operates from leased locations in Utah and Colorado. Nilex USA is a much smaller business than the Company. Its sales for the eight-months ending August 31, 2022 were US\$3.55 million. Its summarized balance sheet as at August 31, 2022 is provided below.

Description	Book Value (US\$000s)
Cash	663
Accounts receivable	429
Inventory	1,335
Fixed assets	44
Other assets	40
Total Assets	2,511
Accounts payable	1,090
Intercompany payable – Nilex Inc.	3,962 ⁷
Other current liabilities	122
Long-term debt	2
Total Liabilities	5,175
Equity	2,664
Total Liabilities & Equity	2,511

⁶ CBB’s opinion also notes that Fulcrum’s security is registered in Saskatchewan as well.

⁷ The difference between this amount and the amount shown in the Company’s balance sheet is due to foreign exchange.

2. As evidenced by the table above, the Company is the largest unsecured creditor of Nillex USA. CIBC also has security over the business and assets of Nillex USA.

4.0 Sale Process

1. On October 6, 2021, the Company engaged Valitas to conduct the Sale Process. A summary of the Sale Process to-date is provided below:
 - Valitas compiled a comprehensive list of over 400 prospective purchasers based on geography and industry;
 - Valitas selected 16 of the prospective purchasers as strong acquisition candidates based on, *inter alia*, strategic fit. Nine of these parties confirmed their interest in the opportunity; and
 - the nine prospective purchasers, plus three additional strategic parties, performed due diligence, including reviewing the confidential information memorandum prepared by Valitas and information made available in a virtual data room. A subset of the prospective purchasers has also conducted site visits and attended management meetings.
2. Valitas initially requested that prospective purchasers submit non-binding letters of intent in March 2022; however, none of the offers received were acceptable to the Company. At the time, the Company forecasted improved results for the balance of 2022 and the Company believed that going back to prospective purchasers later in the year would result in a higher purchase price based on the forecasted improved results. Ultimately, the forecasted results did not materialize.
3. In August 2022, Valitas re-engaged with prospective purchasers and since that time has facilitated their due diligence. Valitas provided interested parties with a template term sheet to be used as the basis for submitting non-binding letters of intent. Several non-binding letters of intent were submitted in late September 2022.
4. On or around October 8, 2022, Valitas sent interested parties a process letter, which sets out the process timelines (the "Process Letter"). The Process Letter, a copy of which is attached as Appendix "B", *inter alia*:
 - a) requires interested parties to submit binding offers by no later than 3:00 pm (Mountain Time) on November 8, 2022 (the "Bid Deadline") in the form of a template asset purchase agreement which has been uploaded to the data room (the "Template APA"); and
 - b) indicates that the Company's objective is to enter into a binding agreement of purchase and sale (the "Purchase Agreement") by no later than November 15, 2022.
5. The Proposal Trustee understands that prospective purchasers are performing further due diligence and that Valitas and the Company believe that several offers will be submitted on the Bid Deadline.

- The Forbearance Agreement establishes the following Sale Process milestones if the Company determined it was necessary to commence an insolvency process.

Milestone	Deadline
Selection of Successful Bidder/Bid Deadline	November 8, 2022
Execution of the Purchase Agreement	November 15, 2022
Sale Approval Order	November 25, 2022
Closing	November 30, 2022

- The Proposal Trustee believes that it is in the best interest of the Company and its stakeholders to complete the Sale Process and supports the Company's request that the Sale Process be continued in the NOI proceedings according to the timelines above. The Proposal Trustee believes that there is a strong likelihood that a value maximizing transaction can be completed in the near term as a result of the Sale Process, and that the transaction will provide the opportunity to preserve jobs for a significant number of the Company's employees.

5.0 Stay of Proceedings

- In order to provide the Company with the greatest opportunity to successfully complete a going-concern transaction, the Company needs to operate without disruption during these proceedings. The orderly operation of the business will be facilitated by incorporating into the requested order the enhanced stay provisions from the model Initial Order issued in a CCAA proceeding as they relate to requiring suppliers and service providers to continue to provide goods and services without disruption, provided they are not required to do so on credit. The stay of proceedings under the Initial Order is significantly broader than the statutory stay of proceedings in proposal/NOI processes under the BIA.
- The relief sought is in the spirit of stabilizing the Company's operations and allowing it the greatest opportunity to preserve normal course operations during the NOI proceedings. Any supply disruptions would impair the Company's ability to continue to operate in the normal course and, potentially, the prospect of completing a going-concern transaction. Accordingly, the Proposal Trustee believes that expanding the scope of the stay of proceedings is appropriate as the continued operation of the Company will assist it to achieve its objectives in these proceedings.

6.0 Garnishment Proceedings

- Watt is a former shareholder of the Company. He is owed \$410,178.78, plus post-judgment interest. Watt received a judgement for this amount on March 21, 2022 pursuant to an order enforcing an arbitration award.
- Another former shareholder, Wilson, is owed approximately \$639,000 and received a consent judgement order dated June 2, 2022. As of the date of this Report, the Proposal Trustee does not believe that Wilson has taken any enforcement steps.

3. On July 21, 2022, Watt took steps to recover on his claim by issuing a Garnishee Summons in respect of any amounts to be paid to the Company by five of its customers (the “Garnishee Customers”). The Garnishee Summons was also served on CIBC. Since that time:
 - a) by letter dated August 8, 2022, CIBC’s legal counsel responded to Watt advising, *inter alia*, that while the Company maintains bank accounts with CIBC, there are no positive balances available to satisfy the Garnishee claim;
 - b) as at the date of this Report, certain Garnishee Customers, have paid approximately \$681,000 into Court;
 - c) on September 30, 2022, October 7, 2022 and October 21, 2022, the Court issued notices that it would be distributing to Watt and Wilson a portion of the funds that have been paid into Court, subject to receiving objections in connection with the proposed distributions within 15 days; and
 - d) CIBC filed objections to the proposed distributions and, on October 26, 2022, CIBC filed an application seeking a direction to the Clerk of the Court to release and distribute to CIBC the funds that have been paid into Court and any additional funds that may be paid into Court pursuant to the Garnishment.
4. Copies of the above noted notices, CIBC’s application and other correspondence are attached to the Affidavit.
5. CIBC takes the position that the amounts owing from the Garnishee Customers to the Company are subject to CIBC’s security.
6. As at the date of this Report, the Proposal Trustee understands that the funds paid into Court by the Garnishee Customers total approximately \$681,000. The Proposal Trustee supports the Company’s application for an order directing any funds paid into Court pursuant to the Garnishment be released to the Company forthwith and directing that the Garnishee Customers pay to the Company any amounts owing to the Company for the following reasons:
 - a) in light of the commencement of the Company’s NOI proceedings, the steps taken by Watt vis-à-vis the Garnishment are stayed;
 - b) the Proposal Trustee understands that the Company’s accounts receivable owing from the Garnishee Customers are subject to CIBC’s first ranking security interest;
 - c) the relief sought preserves Watt’s ability to bring an application in these proceedings asserting entitlement or priority over amounts owing from the Garnishee Customers (or other proceeds available for distribution), or he can respond to a distribution application when such application is brought in these proceedings; and
 - d) the issuance of the Garnishment caused CIBC to place an availability block against the Company’s borrowing base (i.e., in an amount equivalent to the total judgement debt owing to Watt and Wilson). The relief sought should facilitate the removal of the availability block and collection of the amounts paid into Court and the accounts receivable subject to the Garnishment will improve the Company’s liquidity during these proceedings.

7. The Proposal Trustee understands that the Company will be serving Watt, Wilson and the Garnishee Customers with its application materials in support of the November 9, 2022 application.

7.0 KERP

1. The KERP was developed by the Company, in consultation with KSV. The beneficiaries of the KERP (the “KERP Employees”) are provided in Confidential Appendix “1”. Further details concerning the terms of the KERP are also provided in Confidential Appendix “1”.
2. For certain KERP Employees, a portion of the KERP is to be paid as a “stay bonus”. For other employees, their KERP entitlement is based on the outcome of the SISF and recoveries to CIBC.
3. The Company is seeking approval of the KERP and a corresponding KERP Charge in the amount of \$800,000. The KERP Charge is discussed in greater detail in Section 9.4 below.
4. The KERP Employees have been identified as individuals integral to the ongoing orderly conduct of the operations of the business and the Sale Process. KSV has worked closely with certain of these individuals since first being retained in December 2021. The KERP is intended to incentivize the KERP Employees to assist the Company with its restructuring efforts throughout its restructuring proceedings.
5. The Proposal Trustee supports the KERP for the following reasons:
 - a) the continued involvement and cooperation of the KERP Employees is critical to the overall success of this proceeding;
 - b) the Proposal Trustee believes the KERP will assist the Company to retain the KERP Employees, which is in the interest of stakeholders;
 - c) in the Proposal Trustee’s view, the amounts payable under the KERP are reasonable in the circumstances;
 - d) the involvement of the KERP Employees should assist to reduce professional fees, particularly as it relates to the Proposal Trustee’s involvement in the Sale Process and operational matters; and
 - e) CIBC and Fulcrum have advised that they do not oppose the terms of the KERP.

7.1 Sealing

1. The Company is requesting an order sealing Confidential Appendix “1”, which addresses the terms of the KERP. Confidential Appendix “1” includes personal, identifiable and commercially sensitive information, including the identity and proposed compensation of the KERP Employees.
2. The Proposal Trustee believes it is appropriate to seal Confidential Appendix “1”. The sealing of this type of commercially sensitive and personal information is typical in insolvency proceedings to avoid disruption to the debtor company and to protect the privacy of the KERP Employees. The Proposal Trustee does not believe that any stakeholder will be prejudiced if the KERP information contained in Confidential Appendix “1” is sealed.

8.0 Cash Flow

1. Pursuant to the BIA, the Company is required to prepare a cash flow forecast for the stay extension period. The Cash Flow Forecast for the period ending January 13, 2023 (the "Period"), together with Management's Report on the Cash-Flow Statement as required by subsection 50.4(2)(c) of the BIA, is provided in Appendix "C".
2. The Cash Flow Forecast was prepared by the Company with the assistance of the Proposal Trustee. The Company's receipts during the Period are comprised of accounts receivable collections. Projected disbursements are primarily for payroll and benefits, occupancy costs and other operating expenses, inventory purchases (forecasted to be paid on a COD-basis) and professional fees.
3. The Cash Flow Forecast reflects that the Company is projected to remain in compliance with the financial covenants prescribed in the Forbearance Agreement. CIBC is prepared to provide funding under the CIBC Credit Agreement, as set out in the Cash Flow Forecast, provided that all post-filing advances, and related fees, expenses and interest, are secured under the Lender Priority Charge.
4. Based on the Proposal Trustee's review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee's Report on the Company's Cash Flow Statement as required by subsection 50.4(2)(b) of the BIA is attached as Appendix "D".

9.0 Court Ordered Charges

9.1 Administration Charge

1. The Company is seeking an Administration Charge of \$350,000 in respect of the fees and disbursements of the Proposal Trustee, its counsel and the Company's counsel. An Administration Charge is a standard feature of restructuring proceedings and is appropriate, in the Proposal Trustee's view, given the Company's illiquidity.
2. The Administration Charge is required in these proceedings as the professionals retained have not been paid retainers.
3. The Proposal Trustee understands that CIBC and Fulcrum do not oppose the amount or priority of the Administration Charge. All other registered secured creditors, as well as Canada Revenue Agency, will be given notice of the application for this charge and those mentioned below.

9.2 Lender Priority Charge

1. As a condition to the Forbearance Agreement, CIBC agreed to continue to provide funding to the Company under the CIBC Credit Agreement provided that the aggregate of any and all advances made on or after the Filing Date and all interest and other fees and costs accruing after the Filing Date shall be secured by the Lender Priority Charge, which security and charge shall rank in priority to every other claim, lien and security interest against the Company, other than the Administration Charge.
2. Pursuant to the terms of the Forbearance Agreement, CIBC will apply post-filing receipts against the Company's pre-filing debt and new advances by CIBC to the Company during these proceedings will be secured under the Lender Priority Charge.

3. The Proposal Trustee believes the creation of the Lender Priority Charge is reasonable and appropriate in the circumstances as the Company would not be able to continue to operate without funding under the CIBC Credit Agreement and no commercially reasonable lender can be expected to provide the financing urgently required by the Company on a subordinate basis to existing obligations.

9.3 D&O Charge

1. The Proposal Trustee understands that the Company is current on all pre-filing obligations for which directors may be personally liable, including payroll obligations and sales taxes. The Cash Flow Forecast contemplates that all such amounts will continue to be paid in the ordinary course and the Company is projected to have sufficient liquidity to do so provided the Lender Priority Charge is granted. The proposed D&O Charge provides protection for the directors and officers if the Company fails to pay certain obligations which may give rise to liability for directors and officers.
2. In these proceedings, the main risk of directors' and officers' exposure is unpaid payroll, accrued vacation pay and sales taxes. Payroll presently totals approximately \$400,000 per pay period (every two weeks), accrued vacation pay presently totals approximately \$200,000 and monthly sales tax obligations are estimated to total approximately \$325,000. The D&O Charge of \$925,000 is intended to cover one payroll cycle, including source deductions, the vacation pay obligation and one monthly sales tax remittance.
3. The directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, to the extent such coverage is insufficient to pay an indemnified amount as described above, or to the extent that such coverage is denied by the insurance provider.
4. The D&O Charge is proposed to rank in priority to every other claim, lien and security interest against the Company, other than the Administration Charge and the Lender Priority Charge.
5. The Proposal Trustee is of the view that the D&O Charge is reasonable in the circumstances and that the continued involvement of the directors and officers is beneficial to the Company, its stakeholders, and these proceedings.

9.4 KERP Charge

1. The KERP was developed by the Company, in consultation with the Proposal Trustee. The KERP is for seven of the Company's employees (the "KERP Employees").
2. The KERP is comprised of "stay bonuses" and, in some cases, a variable component based on the results of the Sale Process. The maximum amount payable to all KERP Employees is \$800,000.
3. The Company is seeking approval of the KERP and the creation of the corresponding KERP Charge in the amount of \$800,000.
4. Subject to the terms of the KERP as described in Confidential Appendix "1", the KERP Charge is proposed to rank in priority to every other claim, lien and security interest against the Company, other than the Administration Charge, the Lender Priority Charge and the D&O Charge.

9.5 Priority Court Ordered Charges

1. The proposed priority of the Court ordered charges is as follows:
 - a) Administration Charge (\$350,000);
 - b) Lender Priority Charge (\$20 million plus interest, fees and expenses);
 - c) D&O Charge (\$925,000); and
 - d) KERP Charge (\$800,000).

10.0 Company's Request for an Extension

1. The Company is seeking an extension of the time required to file a proposal from November 26, 2022 to January 10, 2023. The Proposal Trustee supports the extension request for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the extension will enhance the likelihood of the Company being able to make a viable proposal to its creditors;
 - c) the extension should not adversely affect or prejudice any group of creditors as the Company is projected to have funding to pay post-filing services and supplies in the amounts contemplated by the Cash Flow Forecast; and
 - d) it will provide the Company the additional time it requires to further advance its restructuring and complete the Sale Process, which is in the interest of all stakeholders.

11.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief being sought by the Company.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE *IN RE* THE PROPOSAL OF
NILEX INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Alberta
Division No. 01 - Edmonton
Court No. 24-2878531
Estate No. 24-2878531

In the Matter of the Notice of Intention to make a proposal of:

Nilex Inc.

Insolvent Person

KSV RESTRUCTURING INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

October 27, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: October 27, 2022, 10:45

E-File/Dépôt Electronique

Official Receiver

Canada Place Building, 9700 Jasper Avenue NW, Suite 725, Edmonton, Alberta, Canada, T5J4C3, (877)376-9902

Canada 

Appendix “B”



Valitas Capital Partners Inc.
100 King Street West, Suite 5600, Toronto, Ontario M5X 1C9
www.valitascapital.com

Reply to:
Paris Aden, (416) 556-0887
paris.aden@valitascapital.com

BY EMAIL, STRICTLY CONFIDENTIAL

October 8th, 2022

Dear ,

Re: Nilex Inc. and Nilex USA Inc. (jointly, the “Company”)

As you know, Valitas Capital Partners (“Valitas”) has been retained by the Company to conduct a sale process for its business. We appreciate the time and effort you have taken to perform due diligence and participate in the process thus far.

Based on interest to date, Valitas and the Company are of the view that it is important to ensure all parties are working to uniform timelines and with the same level of information. Accordingly, the Company, through Valitas, is requesting that all interested parties submit firm and binding offers by no later than 3:00 pm (Mountain Time) on November 8, 2022 (the “Bid Deadline”), using the form of template asset purchase agreement that has now been uploaded to the Company’s data room (the “Template APA”). When submitting your offer, please provide a blackline comparing all changes from your form of offer as against the Template APA so that Valitas and the Company can identify all changes to the Template APA. The principal criteria for selection of the best offer will be the purchase price, conditions, time to closing, and benefits to the Company’s stakeholders, such as employees. Bidders are strongly encouraged to minimize the conditionality of their offers.

The Company’s objective is to enter into a binding agreement of purchase and sale by no later than November 15, 2022.

We have previously uploaded a transition services agreement (the “TSA”) to the data room. To the extent that you require more time to perform due diligence at the time you submit your offer, for example, to determine which employees you wish to offer employment or which locations you wish to lease, we strongly recommend that you mark up the TSA and submit it with your offer.

Valitas and the Company will continue to assist you to perform due diligence until the Bid Deadline. At all times your participation in this process and all information provided to you remain subject to the terms of the non-disclosure agreement you have entered into with the Company. If you have any

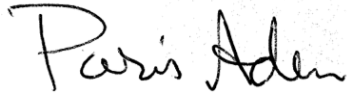
Valitas Capital Partners Inc.

questions concerning the process or require any assistance with your due diligence, kindly contact me at your earliest convenience.

We look forward to your continued participation in the process and to receipt of your offer.

Sincerely,

VALITAS CAPITAL PARTNERS INC.

A handwritten signature in black ink that reads "Paris Aden". The signature is written in a cursive, flowing style.

Paris Aden, Partner

Appendix “C”

Nilex Inc. and Nilex USA Inc.
Projected Cash Flow Statement
For the period ending January 13, 2023
(Unaudited; \$CAD Thousands)

	Note	Week ending											Total	
		28-Oct-22	4-Nov-22	11-Nov-22	18-Nov-22	25-Nov-22	2-Dec-22	9-Dec-22	16-Dec-22	23-Dec-22	30-Dec-22	6-Jan-23		13-Jan-23
Receipts														
Accounts receivable collections	2	1,453	1,661	1,054	1,261	1,254	1,328	1,054	1,295	1,495	1,144	1,000	1,000	14,998
Disbursements														
Operating Disbursements														
Vendor payments	3	(384)	(865)	(865)	(865)	(865)	(395)	(395)	(395)	(395)	(395)	(395)	(395)	(6,611)
Payroll		(161)	(275)	(161)	(275)	(161)	(250)	(41)	(370)	(41)	(370)	(41)	(370)	(2,513)
Rent		-	(181)	-	-	-	(181)	-	-	-	-	(181)	-	(544)
Insurance		(30)	(65)	-	(20)	-	(65)	-	(20)	-	(55)	(65)	-	(320)
Other		-	(601)	(14)	(90)	-	(451)	(14)	(70)	(20)	(250)	(451)	(20)	(1,980)
		(575)	(1,987)	(1,039)	(1,250)	(1,025)	(1,342)	(450)	(855)	(456)	(1,070)	(1,133)	(785)	(11,968)
Other Disbursements														
Interest and fees - CIBC Revolving Line of Credit		(19)	(20)	(20)	(20)	(20)	(16)	(16)	(16)	(16)	(16)	(16)	(16)	(217)
Interest - CIBC Term Debt		(15)	-	-	-	(15)	-	-	-	-	(19)	-	-	(48)
Principal repayments - CIBC Term Debt		-	-	-	-	-	(83)	-	-	-	-	-	-	(83)
Restructuring costs	4	(225)	-	-	(175)	-	-	-	(175)	-	-	-	(175)	(750)
Total Disbursements		(834)	(2,007)	(1,060)	(1,445)	(1,061)	(1,442)	(466)	(1,047)	(472)	(1,105)	(1,149)	(977)	(13,066)
Net Cash Flow		619	(347)	(6)	(185)	193	(114)	588	248	1,022	39	(149)	23	1,933
Consolidated Revolver														
Opening Revolving Line of Credit		14,782	14,163	14,510	14,516	14,700	14,507	14,621	14,033	13,785	12,763	12,724	12,873	14,782
Net Cash Flow		619	(347)	(6)	(185)	193	(114)	588	248	1,022	39	(149)	23	1,933
Ending Revolving Line of Credit		14,163	14,510	14,516	14,700	14,507	14,621	14,033	13,785	12,763	12,724	12,873	12,850	12,850
Pre-Filing Revolver:														
Opening Operating Line Balance		14,782	13,329	11,668	10,614	9,354	8,100	6,771	5,717	4,423	2,928	1,784	784	14,782
Post-Filing Receipts		1,453	1,661	1,054	1,261	1,254	1,328	1,054	1,295	1,495	1,144	1,000	784	14,782
Ending Operating Line		13,329	11,668	10,614	9,354	8,100	6,771	5,717	4,423	2,928	1,784	784	(0)	(0)
Post-Filing Revolver														
Opening Operating Line Balance		-	834	2,842	3,901	5,347	6,407	7,849	8,316	9,362	9,835	10,940	12,089	-
Post-Filing Receipts		-	-	-	-	-	-	-	-	-	-	-	216	216
Post-Filing Disbursements		(834)	(2,007)	(1,060)	(1,445)	(1,061)	(1,442)	(466)	(1,047)	(472)	(1,105)	(1,149)	(977)	(13,066)
Ending Operating Line		834	2,842	3,901	5,347	6,407	7,849	8,316	9,362	9,835	10,940	12,089	12,850	12,850

The above financial projections are based on management's assumptions detailed in Appendix "1-1".
The note references correspond to the assumption numbers shown in Appendix "1-1".

NILEX INC.

Per: _____

Oct 31, 2022

Date

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL AND NOT
IN ITS PERSONAL CAPACITY

Per: _____

October 31, 2022

Date

Projected Statement of Cash Flows

For the period ending January 13, 2023

(Unaudited; \$CAD)

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Nilex Inc. (the "Company") for the period October 27, 2022 to January 13, 2023 in respect of its proposal proceedings under the *Bankruptcy and Insolvency Act*.

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical

2. Represents projected accounts receivable collections based on the payment practice of the Company's customers.

Most Probable

3. Reflects payments to trade vendors in respect of the Company's continuing operations.
4. Represents estimated professional fees of the Company's legal counsel, the Propoal Trustee and its legal counsel and CIBC's legal counsel.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA)**

The management of Nilex Inc. (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending January 13, 2023.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 4.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 4. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 31st day of October, 2022.

NILEX INC.

A handwritten signature in blue ink, appearing to read 'J. Allen', is written over a horizontal line.

Per: Jeff Allen, Vice President, Finance

Appendix “D”

**Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)**

The attached statement of projected cash-flow of Nilex Inc. (the "Company"), as of the 31st day of October, 2022, consisting of a weekly cash flow statement for the period October 27, 2022 to January 13, 2023, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2-4.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 31st day of October, 2022.

**KSV RESTRUCTURING INC.
TRUSTEE**



Per: